IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/10/2002

CORAM

THE HON'BLE MR. JUSTICE K. SAMPATH

S.A.No.987 of 1990
and
C.M.P.No.10929 of 1991

1. Ramaswamy (Died)
2. Ramathal W/o Arumugham
3. Periaswamy
4. Karuppanna Gounder (Died)
5. Ramathal W/o Narayanan
6. Valliammal
7. Santhi (Minor)
8. Marimuthu (Minor)
9. Mahendran (Minor)

Appellants 6 to 9 have been brought on record as legal representatives of deceased 1st appellant and the 6th appellant is appointed as guardian of minor appellants 7 to 9 – Vide order dated 26-10-1992 in C.M.P.Nos. 8418 and 8414/92 respectively.

10. Lakshmi
11. Loganathan
12. Balasubramanian
13. Devi

Appellants 10 to 13 have been brought on record as legal representatives of deceased 4th appellant – Vide order dated 26-10-1992 made in C.M.P. No. 8411/92. ... Appellants

-Vs-

1. Pappammal (Died),
P.K.R. Colony,

Tiruppur town,
Palladam Taluk.

2. Ramayee
W/o Raju Subbanna Gounder,
P.K.R. Colony,
Tiruppur Town,
Palladam Taluk.

3. Periasamy alias Natarajan
3. Chinnasamy
4. Jayanthi Antony

Respondents 3 to 5 have been
brought on record as the
legal representatives of
deceased 1st respondent -
Vide order dated 25-9-2002
made in C.M.P.Nos.10768 to
10770 of 2002. ... Respondents

!For Appellants: Mrs. Pushpa Sathyanarayana
for
Mr.T.R. Rajaraman

^For Respondents: Mr.K.M. Santhanagopalan

The second appeal is filed against the judgment and decree dated 31 -1-1990 made in A.S.No.90/88 on the file of the Principal District Judge, Coimbatore.

:JUDGMENT
Defendants 2 to 6 in O.S.No.67/83 filed the second appeal. Pending second appeal, the first appellant, the fourth appellant and the first respondent passed away. The first appellant's legal representatives have come on record as appellants 6 to 9. The fourth appellant's legal representatives have come on record as appellants 10 to 13. The first respondent's legal representatives have come on record as respondents 3 to 4. The suit was filed by the first respondent herein against her mother, the second respondent herein and appellants 1 to 5 for setting aside the sale deeds executed by her mother, the second respondent, in favour of appellants 1 to 5 and for recovery of possession of the suit properties.

2. Her case was as follows:

The first defendant is her mother. The plaintiff and her

husband were living in Madukkarai, Coimbatore District. Her husband was an employee in Madukkarai Cement Factory. He resigned his job and the plaintiff and her husband settled down in Tiruppur. The plaintiff had brought Rs.10,000/- with her and both the plaintiff and her husband

entrusted the amount with the first defendant, who is also the plaintiff's husband's sister for purchasing vacant sites. She purchased the suit properties in the name of the plaintiff. The plaintiff ever since the purchase, is in possession and enjoyment by paying quit rent. Due to some misunderstanding between her brother, the plaintiff's husband, and the first defendant, in order to harass the plaintiff's family and to cause loss to her, the first defendant sold the properties described in Schedule B to the plaint, impersonating herself as the plaintiff and as owner of the properties to defendants 2, 3, 5 and 6. The first defendant had no manner of right over the suit properties. The sale deeds are not binding on the plaintiffs. They are invalid and no title can be passed. When the plaintiff came to hear some rumour about the dealings, the first defendant escaped from the plaintiff;s house with the original sale deeds to Gobichettipalayam, where her other daughter Thulasiammal is residing. Thulasimamal is the daughter of the first defendant through her second husband one Raju. The plaintiff came to know about the sale from the Sub Registrar's Office. She searched for the first defendant. Till December, 1981 she could not find out the whereabouts of the first defendant. At the time of filing the suit, the first defendant was at Tiruppur. As the first defendant was trying to sell the A Schedule property as if it belonged to her, the suit came to be filed.

3. The first defendant filed a written statement admitting the title of the plaintiff to the suit properties and stating further as follows:

The plaintiff, the first defendant and all the family members were working at Madukkarai Cement Factory. The first defendant came to Tiruppur because of old age and was living there. Defendants 2 to 4 approached her and promised her to get some loan from Government. They wanted her to come to the Registrar's Office, Tiruppur, and there they asked the first defendant to put her thumb impression in several papers and further advised her to represent herself as Pappammal stating that only then loan would be disbursed. This defendant believed their words, put her thumb impression and represented before the Officer that her name was Pappammal. Two days later, defendants 2 to 4 paid Rs.1000/- to the first defendant and said that the amount was the loan sanctioned by the Government. Thereafter, this defendant took the amount and went to reside with her daughter through her second husband at Gobi. Only after the suit, the first defendant came to know that defendants 2 to 4 had cheated her by getting the sale deed executed in the name of Pappammal. The first defendant has nothing to do with the suit properties. She was made a scape goat for the benefit of defendants 2 to 4. She had no intention to cheat the plaintiff at any time.

4. Defendants 4, 5 and 6 filed a written statement stating that the first defendant alone is the owner of the properties. Her name is

Pappammal alias Ramayee, who is the daughter of Sadaya Boyan and not the plaintiff. She purchased the B Schedule properties from one Ramasamy Gounder for Rs.4500/- on 7-7-1977 along with Subbiah Naicker. There was a partition on 9-7-1979 between Subbiah Naicker and Pappammal and B Scheduloe properties were allotted to Pappammal. Pappammal sold the same as found in the partition deed to the fifth defendant, Karuppanna Gounder, for profit and valid consideration under a registered sale deed dated 9-7-1979. There was also delivery of possession of the property to the fifth defendant. Pappammal handed over the original sale deed dated 7-7-1977 and the original partition deed dated 9.7.1979 to the fifth defendant in support of the sale deed dated 9-7-1979. The fifth defendant took possession of the suit properties from Pappammal. He is in continuous, uninterrupted possession, use and enjoyment of the said property as a rightful and lawful owner. He also put up a pucca tiled house, let out the same to four tenants and the tenants are residing in the said property. He is regularly paying municipal house tax for the house. The plaintiff is not in possession. She never had possession. The sale deeds produced by the plaintiff are certified copies and the tax receipts are after it was purchased by the fifth defendant. There was no panchayat. The suit has not been properly valued. The plaintiff has to pay Court fee for the value found in the said sale deeds. There is no cause of action. The first defendant sold a portion of the suit properties to the sixth defendant for valuable consideration under a registered sale deed on 29-3-1979. He was also put in possession. The plaintiff has no interest, right or title in the said properties. On 10-12-19 82 the fourth defendant purchased the suit properties from the sixth defendant for proper and valid consideration. He is in possession ever since the date of his purchase to the knowledge of the plaintiff. The first defendant is known as Pappammal alias Ramayee. The plaintiff is not the owner of the properties. The defendants are bona fide purchasers of the suit properties for proper and valid consideration. There was no panchayat.

5. The plaintiff filed a reply statement denying the various averments in the written statement and the additional written statement stating that the plea of estoppel raised is untenable. Defendants 3 to 6 are not bona fide purchasers for valuable consideration and good faith.

6. On the above pleadings, the trial Court framed the necessary issues and on the oral and the documentary evidence, accepted the case of the plaintiff and decreed the suit. Defendants 2 to 6 filed an appeal in A.S.No.90/88 before the Principal District Court, Coimbatore. The learned Principal District Judge, by judgment and decree dated 3 1-1-1990 dismissed the appeal confirming the decision of the trial Court.

7. It is as against that, the present second appeal has been filed. At the time of admission, the following substantial questions of law were raised for decision in the second appeal:

"(1) When the title of the plaintiff is disputed by the defendants, is the suit for possession alone maintainable against defendants 2 to 6?

(2) When the evidence clearly discloses that it is the first defendant who had

purchased the suit property and has been in enjoyment as owner,is the learned District Judge right in upholding the plaintiff's title?"

8. The Courts below have concurrently held that the first defendant has impersonated as the plaintiff and sold the properties to the other defendants. The plaintiff seeks to set aside the sale deeds Exs. B-5, 6 and 15 as not valid. It is not disputed that the plaintiff is called Pappammal and her father's name is Sadaya Boyan. Equally, there is no dispute that the first defendant;s name is Ramayee. According to the other defendants, the first defendant is also called as Pappammal. Exs.B-1 to B-4, which stand in the name of the first defendant, do not show that she has an alias name Pappammal. On 7-7-1977 under Ex.B-15 one Pappammal, daughter of Sadaya Boyan, got a sale deed from one Ramasamy Gounder for Rs.5000/-. Under Ex.B-7 Papammal, daughter of Sadaya Boyan and one Subbiah Naicker had together purchased a portion of the suit property for Rs.4,500/-. Exs.B-7 and B-15 are the original title deeds. On 27-7-1977 under Ex.B=-5 a portion of the suit property is sold to the second defendant Ramasamy for Rs.10 00/-. Under Ex.B-6 dated 15-11-1978 another portion of the suit property is sold for Rs.1000/- to the third defendant. Under Ex.B-9 on 9 -7-1979 a third portion is sold to the fifth defendant Karuppanna Gounder for Rs.2000/-. Under B-16 on 29-3-1979 a portion of the suit property is sold to the fourth defendant for Rs.2500/-. In all the sale deeds Pappammal, daughter of Sadaya Boyan is shown as the vendor. According to defendants 2 to 6, they have purchased the properties from Pappammal, daughter of Sadaya Boyan. It is not disputed that the first defendant's name is Ramayee. But, according to the stand of defendants 2 to 6, she has an alias name Pappammal. In none of the documents in their favour, the vendor's name is mentioned as Pappammal alias Ramayee. Documents have been produced to show that when the first defendant was employed at Madukkarai Cement Factory, she was known only as Ramayee. The documents are Exs.B-1 to B-4. Ex.B-1 is the service certificate issued to the first defendant by Associated Cement Co. Ltd. Ex.B-2 is the Canara Bank Passbook. Ex.B-3 is a letter issued by the Life Insurance Corporation of India to the first defendant. Ex.B-4 is yet another letter dated 1-9-1983 from the Life Insurance Corporation of India. Exs.B-1 and B-2 are of the year 1973 . At least four years prior to the purchase set up by defendants 2 to 6, these documents had come into existence. The Time Keeper from the factory has been examined as P.W.2, through whom Ex.A-3, which is the salary register, has been marked. The first defendant's thumb impression is found and her name is given as Ramayee, daughter of Sadayan. Exs.B-3 and B-4 are letters from the Life Insurance Corporation of India and they show Ramayee as the wife of Raju. The name of the first defendant is not mentioned as Ramayee alias Pappammal. Merely because before the Sub Registrar, the first defendant posed herself as Pappammal, it would not mean that the first defendant is Pappammal. When so many documents have been produced to dispel the stand taken by defendants 2 to 6 that the first defendant is Pappammal alias Ramayee, absolutely no material has been produced by defendants 2 to 6 to controvert the same. They have not produced any evidence to show that the first defendant has an alias name Pappammal. The Courts below have come to the right conclusion that the first defendant at the instance of defendants 2 to 6, impersonated as the plaintiff and executed the documents. The plaintiff is not a party to those documents. She rightly ignored the documents and sought to recover possession within 12

years from the date of the sales. They are void documents. Only if she is a party to the documents, any question of three year limitation will arise.

9. The substantial questions of law are answered against the appellants. The second appeal fails and the same is dismissed with costs of Rs.2500/-.

10. The first respondent has filed a civil miscellaneous application in C.M.P.No.10929/91 for permission to amend the plaint. The appellant's Counsel was served with copies of the petition and the affidavit as early as 20-8-1991. The appellants have not chosen to file any counter to the petition. In the affidavit in support of the petition in essence it is stated as follows:

In the suit, along with the reliefs claimed a further relief for directing the appellants to pay mesne profits should have been claimed, but due to inadvertence it had not been claimed. The claim is a mere consequential relief based on the pleadings and the reliefs claimed in the suit. In these circumstances, amendment of the pleadings with additional prayer regarding payment of mesne profits by the respondents to avoid technical objections in the matter of the plaintiff getting just and proper relief with respect to the suit properties is sought. If the amendment is not allowed, the plaintiff would be put to irreparable loss and hardship.

11. As already noted, no counter has been filed and as rightly pointed out by the learned Counsel for the first respondent, the appellants have been squatting on the properties for several years past and the plaintiff has not been able to realise the fruits of her decree. Indeed, she did not choose to file the application in the suit before the trial Court or before the lower Appellate Court in the appeal. But, when the appellants have been instrumental in creating fake sale deeds by prevailing upon the first defendant to impersonate the plaintiff, it will be highly unjust and inequitable if the plaintiff is to be denied the benefit of the income from the properties, which lawfully belonged to her.

12. The learned Counsel has referred to a number of judgments in support of the petition for amendment. The principle relating to amendment is well settled. Object of Courts and rules of procedure are to decide the rights of parties and not to punish them. Merely because the plaintiff has not chosen to seek a prayer for mesne profits all these years, she cannot be denied that, if she is otherwise entitled to it.

13. In DHANI SAHU AND OTHERS VS. BISHUN PRASAD SINGH AND OTHERS (AIR 1942 Patna 247) it has been held that even in the absence of prayer, relief can be granted.

14. In RAMAKURUP NARAYANA KURUP VS. OOMMAN EAPEU (AIR 1953 Travancore-Cochin 237) it has been held as follows:

"An application for amendment can be allowed, however late it may be made.

Amendments can be allowed not merely by the trial Court, but also by the Court of appeal or even of the second appeal. Mere delay in making the application is not by itself a ground for rejecting it."

15. In KARTAR SINGH HIRA SINGH VS. MAL SINGH SURJAN SINGH AND OTHERS (AIR 1954 PEPSU 39) it has been held that,

"rules of procedure are meant to enable Courts to do justice between the parties and not to stand in their way. Thus a party may be allowed to amend the plaint or retract an amendment already allowed to be made even at the stage of second appeal when the Court is satisfied as to its necessity."

16. In RAMINDER SINGH AND ANOTHER VS. SHAM LAL AND ANOTHER (AIR 198 1 Punjab and Haryana 145) it has been held that Court can grant relief to the plaintiff even if there is no specific prayer if he is entitled on facts proved upon the evidence in the case.

17. On the materials I am satisfied that this is a just case where the plaintiff is entitled to the amendment prayed for. However, I would restrict the prayer for mesne profits from 20-8-1991, the date of the filing of the petition for amendment. The petition will stand allowed. The plaintiff is granted permission to amend her plaint to claim mesne profits from 20-8-1991.

Index: Yes
Internet: Yes

IGP

To

1. The Principal District Judge,
Coimbatore (with records).

2. The Subordinate Judge,
Tiruppur.

3. The Record Keeper,
V.R. Records,
High Court,
Madras.

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